

Andrea Darrow Smith, Esq. (SBN: 265237)
 andrea@westcoastlitigation.com
 Joshua B. Swigart, Esq. (SBN: 225557)
 josh@westcoastlitigation.com

Hyde & Swigart
 4129 Main Street, Suite B8
 Riverside, CA 92501
 (951) 784-7770
 (619) 297-1022

Attorneys for John Christensen

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

<p>John Christensen</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Gravano, Mattrey & Mayner, LLC</p> <p style="text-align: center;">Defendant.</p>	<p>Case No: '12CV1349 W MDD</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.

3. John Christensen, ("Plaintiff"), through Plaintiff's attorneys, brings this action to challenge the actions of Gravano, Mattrey & Mayner, LLC, ("Defendant"), with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

4. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

5. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

6. Unless otherwise stated, all the conduct engaged in by Defendant took place in California.

7. Any violations by Defendant were knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violation.

JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

9. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

10. Because Defendant does business within the State of California, personal jurisdiction is established.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c).

12. Based on information and belief Defendants commonly conduct business in San Diego County and are therefore subject to personal jurisdiction in San Diego County, therefore Defendants reside in this judicial district pursuant to 28 U.S.C. § 1391(c).

13. At all times relevant, Defendant conducted business within the State of California.

PARTIES

14. Plaintiff is a natural person who resides in the State of California.

15. Defendant is located in the State of New York.

16. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

17. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

18. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

19. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

20. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

21. Sometime before February 2012, Plaintiff is alleged to have incurred certain financial obligations.

22. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).

23. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

24. Sometime thereafter, but before February 2012, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

25. Subsequently, but before February 2012, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

26. In or about early February 2012, Plaintiff received a collection call from Defendant seeking to collect the alleged debt.

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27. This communication to Plaintiff was a “communication” as that term is defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with 15 U.S.C. § 1692g(a).

28. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b) defines that phrase, and an “initial communication” consistent with Cal. Civ. Code § 1812.700(b).

29. During the initial call, Plaintiff informed Defendant that the call was received on a work telephone number and requested that Defendant not call him.

30. Despite Plaintiff’s request that Defendant cease collection calls to his work telephone number, Plaintiff received multiple telephone calls from Defendant at his work number throughout the month of February 2012.

31. Without the prior consent of the consumer given directly to the Defendant or the express permission of a court of competent jurisdiction, Defendant communicated with the consumer in connection with the collection of a debt at the consumer’s place of employment when Defendant knew or had reason to know that the consumer’s employer prohibited the consumer from receiving such communication. Consequently, Defendant violated 15 U.S.C. § 1692c(a)(3).

32. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

33. Furthermore, Defendant would place back to back calls to Plaintiff’s work phone despite the request that Defendant cease calls.

34. Without the prior consent of the consumer given directly to the Defendant or the express permission of a court of competent jurisdiction, Defendant communicated with the consumer in connection with the collection of a debt at an unusual time or place or a time or place known or which should be

1 known to be inconvenient to the consumer. Consequently, Defendant violated
2 15 U.S.C. § 1692c(a)(1).

3 35. Because this violated certain portions of the federal Fair Debt Collection
4 Practices Act as these portions are incorporated by reference in the Rosenthal
5 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
6 this conduct or omission violated Cal. Civ. Code § 1788.17.

7 36. Through this conduct, Defendant caused a telephone to ring or engaged a
8 person in telephone conversations repeatedly or continuously with intent to
9 annoy, abuse, or harass any person at the called number. Consequently,
10 Defendant violated 15 U.S.C. § 1692d(5).

11 37. Because this violated certain portions of the federal Fair Debt Collection
12 Practices Act as these portions are incorporated by reference in the Rosenthal
13 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
14 this conduct or omission violated Cal. Civ. Code § 1788.17.

15 38. Through this conduct, Defendant caused a telephone to ring repeatedly or
16 continuously to annoy the person called. Consequently, Defendant violated
17 Cal. Civ. Code § 1788.11(d).

18 39. On or about February 22, 2012 Defendant telephoned Plaintiff's son in law in
19 an attempt to collect the alleged debt.

20 40. During this telephone call, Defendant threatened Plaintiff's son in law that he
21 would be subpoenaed to testify in New York if Plaintiff did not pay the
22 alleged debt.

23 41. Except as provided in 15 U.S.C. § 1692b, and without the prior consent of the
24 consumer given directly to the Defendant, and without the express permission
25 of a court of competent jurisdiction, and for a purpose not reasonably
26 necessary to effectuate a postjudgment judicial remedy, Defendant
27 communicated, in connection with the collection of a debt, with a person
28 other than the consumer, his attorney, a consumer reporting agency, the

1 creditor, the attorney of the creditor, or the attorney of Defendant.
2 Consequently, Defendant violated 15 U.S.C. § 1692c(b).

3 42. Because this violated certain portions of the federal Fair Debt Collection
4 Practices Act as these portions are incorporated by reference in the Rosenthal
5 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
6 this conduct or omission violated Cal. Civ. Code § 1788.17.

7 43. Through this conduct, Defendant communicated information regarding a
8 consumer debt to a member of the family of Plaintiff, and the purpose of the
9 communication was not to locate Plaintiff, and neither Plaintiff nor the
10 attorney for Plaintiff had consented in writing to such communication.
11 Consequently, this conduct or omission violated Cal. Civ. Code § 1788.12(b).

12 44. During some of the collection calls directed to Plaintiff, Defendant would
13 inform Plaintiff that the call was being placed by an “Inspector” and that
14 Defendant had a process server waiting down the street to serve Plaintiff with
15 legal documents.

16 45. Through this conduct, Defendant used false representations or deceptive
17 means to collect or attempt to collect a debt or to obtain information
18 concerning a consumer. Consequently, Defendant violated 15 U.S.C. § 1692e
19 and 15 U.S.C. § 1692e(10).

20 46. Because this violated certain portions of the federal Fair Debt Collection
21 Practices Act as these portions are incorporated by reference in the Rosenthal
22 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
23 this conduct or omission violated Cal. Civ. Code § 1788.17.

24 47. During other collection calls, Defendant threatened Plaintiff that he would be
25 convicted of check fraud if he did not pay the alleged debt.

26 48. Through this conduct, Defendant used a false, deceptive, or misleading
27 representation or means in connection with the collection of a debt.
28

1 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §
2 1692e(10).

3 49. Through this conduct, Defendant threatened to take action that cannot legally
4 be taken or that is not intended to be taken. Consequently, Defendant violated
5 15 U.S.C. § 1692e(5).

6 50. Because this violated certain portions of the federal Fair Debt Collection
7 Practices Act as these portions are incorporated by reference in the Rosenthal
8 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
9 this conduct or omission violated Cal. Civ. Code § 1788.17.

10 51. Through this conduct, Defendant represented or implied that nonpayment of
11 any debt would result in the arrest or imprisonment of a person or the seizure,
12 garnishment, attachment, or sale of property or wages of a person when such
13 action was not lawful Defendant did not intended to take such action.
14 Consequently, Defendant violated 15 U.S.C. § 1692e(4).

15 52. Because this violated certain portions of the federal Fair Debt Collection
16 Practices Act as these portions are incorporated by reference in the Rosenthal
17 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
18 this conduct or omission violated Cal. Civ. Code § 1788.17.

19 53. Through this conduct, Defendant threatened that the failure to pay a consumer
20 debt would result in an accusation that the debtor has committed a crime
21 where such accusation, if made, would be false. Consequently, Defendant
22 violated Cal. Civ. Code § 1788.10(b).

23 54. Due to Defendants' conduct Plaintiff's suffered actual damages in the form of
24 emotional distress and mental anguish type damages which manifested in
25 symptoms including but not limited to: nervousness, stress, anxiety,
26 embarrassment, and humiliation, significantly impacting his personal
27 relationships.

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CAUSES OF ACTION**COUNT I****FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)****15 U.S.C. §§ 1692 ET SEQ.**

55. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

56. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

57. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)****CAL. CIV. CODE §§ 1788-1788.32**

58. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

59. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

60. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

61. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: June 5, 2012

By: s/ Andrea Darrow Smith
Email: andrea@westcoastlitigation.com
Attorneys for Plaintiff